

## Minutes

### North Carolina Structural Pest Control Committee

October 2, 2013

The one hundred and ninety-fourth meeting of the NC Structural Pest Control Committee was held on **October 2, 2013**, in the Donald W. Eady Building, Agronomic Services Division, Reedy Creek Road, Raleigh, NC 27607.

Vice-Chairman Waldvogel called the meeting to order with all members present except Mr. Laughinghouse.

Dr. Waldvogel read the ethics reminder. No member indicated any conflicts of interest.

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Dr. Waldvogel introduced the newest member of the Committee, Mr. Jonathan Lanier, Assistant General Counsel with the NCDA&CS. Mr. Lanier was appointed by Commissioner Troxler to take over the position vacated upon the retirement of the Committee's former Chair, Mr. David McLeod on May 31, 2013.

Mr. Lanier expressed his appreciation for his appointment and stated that he looks forward to moving into the work of the Committee.

Mr. Dalley also introduced Ms. Theresa Williams with the Division who will be assisting with the Committee's administrative matters.

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Next, Dr. Waldvogel stated that the first order of business would be to elect a new Committee Chair. He then opened the floor to nominations.

Mr. Tesh nominated Dr. Waldvogel, **SECONDED** by Mr. Clegg.

Mr. Langley **MOVED** to close the nominations and **ACCEPT BY ACCLAMATION**, Dr. Waldvogel as Chair. The **VOTE WAS UNANIMOUS**.

Dr. Waldvogel then stated that the Committee would need to elect a new Vice Chair, inasmuch as he had served in that capacity. He opened the floor to nominations.

Mr. Hazelwood nominated MR. Tesh, **SECONDED** by Mr. Meacham.

Mr. Langley MOVED to close the nominations and ACCEPT BY ACCLAMATION, Mr. Tesh as Vice Chair. The VOTE WAS UNANIMOUS.

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The next agenda item was to consider the Minutes of the May 1, 2013 Meeting. It was **MOVED** by Mr. Langley, **SECONDED** by Mr. Hazelwood and **CARRIED** that the minutes be approved as presented.

The Minutes of the May 31, 2013 Conference Call Committee Meeting were then presented for consideration. It was MOVED by Mr. Tesh, SECONDED by Mr. Meacham and CARRIED that the minutes be approved as presented.

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The next item for consideration was a request from Mr. Don Agel, a Fayetteville, NC Home Inspection Service Operator to address the Committee regarding moisture control work performed by Structural Pest Control Professionals.

Inasmuch as Mr. Agel was not present, Mr. John Dalley explained the request, stating the Mr. Agel is alleging that PMPs are performing in his opinion, substandard moisture remediation operations, which do not meet local building codes. Mr. Dalley indicated that the Division has tried to explain the limitations under the Structural Pest Control Law concerning moisture and any resultant fungi. The Company with which Mr. Agel took exception was according to Mr. Dalley, not performing any moisture control services under its Structural Pest Control License, and maintained separate contracts for each type of service—the moisture control contract did not contain the SPC license number.

Mr. Langley recommended that the Committee move on to other agenda items and if Mr. Agel arrives, the Committee could then hear his concerns and not have to discuss this matter twice.

(NOTE: MR. AGEL NEVER ARRIVED)

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The next item on the agenda was to consider a response from the NC Pest Management Association's Rules and Regulations Committee concerning its review of proposed Changes to the Structural Pest Control Law, as drafted for Representative Bryan Holloway by Mr. Mike Phillips, Attorney, representing Mr. David Brown and Mr. Greg Pratt.

Dr. Waldvogel recognized Mr. Harden Blackwell (representing NCPMA Rules Committee) who stated that the Committee had carefully considered each of the proposals and does not feel that the changes are justified. He added that the Association's recommendation is that there should be no amendments to the Structural Pest Control Law.

Dr. Waldvogel then recognized Mr. Dalley for the Division's perspective. Mr. Dalley indicated that the Division concurs with the Committee's assessment, however we would aver that particularly in the case of bed bug remediation operations, furniture moving constitutes an important component of the "structural Pest Control" operation.

Following discussion, it was MOVED by MR. Langley, SECONDED by Mr. Clegg, and CARRIED that the Structural Pest Control Committee acknowledge the hard work of the Association and endorse the recommendation that at the present time, the proposed amendments to the Structural Pest Control Law are not warranted.

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The next agenda item was to consider the issues of Canine Detection services and Animal Removal /Pest Control services. The Chair called on Mr. Dalley for these items.

Mr. Dalley discussed the ongoing issue with respect to operations performing canine inspections—that those inspections and the subsequent issuing of reports, whether for termites or bed bugs, constitute the practice of Structural Pest Control as defined in the Law. With particular reference to bed bug canine detection services, the vast majority of those performing such services would not qualify for licensing under the Law, because they could not meet the experience requirements for prerequisites to taking the licensing examination, for example. Nor are there any standards in place by the Committee with respect to training and certification of the animals. Many of these practitioners do not want to perform any other services except the detection services, but under existing law and rules, they cannot advertise their services without being licensed—or, if they work under the supervision of a SPC licensee (i.e., work as a Registered Technician), all advertising, billing and reports, etc. must be issued in the name of the licensee, and therefore, the canine detection service is precluded from advertizing under its own company name.

Mr. Dalley reported that the State of Maryland has "Team Training and Certification" requirements in place for canine detection operations, and

the Division is reviewing them to determine whether it would be feasible to recommend that the Committee consider something analogous to these rules for North Carolina.

Mr. Bloch added that what these operations for the most part want to do is operate much as the “Pest Control consultant” under the NC Pesticide Law. However, as was discussed previously, there is no clear authority under the Structural Law, for implementing a SPC “consultant” category, and thus an amendment of the law would appear to be required.

Mr. Bloch then suggested that he could continue to work with the Division, using Maryland’s example as a guide, and draw up some proposed rules for the Committee’s consideration, which could then be submitted to the Rules Review Commission for approval—hopefully without that body ruling that a statutory change is required.

Mr. Meacham stated his preference for proceeding in that manner, and then if the Commission does rule that a change in the Law would be required, the Structural Pest Control Committee can then develop that proposal as “Plan B.”

Mr. Carl Falco suggested that there are two separate issues here: the first is how the Committee will decide to regulate canine detection services, as far as approving training standards and certification of animals; and the second issue concerns the use of such animals—by licensed PCOs as now required, or by a “New consultant” category.

Mr. Tesh stated that the National Pest Management Association also has standards and guidelines concerning canine detection operations which could also be useful to the Committee in its deliberations.

Dr. Waldvogel cited two recent studies about the “scientific accuracy” of canine detection. He indicated that one Florida study was flawed; and one conducted at Rutgers, while he didn’t know where it stands, was showing great variability among animals. He also asked the Division to inquire of Maryland whether there was any cost to their program, in terms of training for their staff in implementing this new regulatory requirement.

Mr. Lanier asked what the specific goals are here---is it to determine, for instance, whether this could be used as evidence before the Committee?

Mr. Bloch replied affirmatively and also to ensure that consumers are protected by mandating that any such operations be held accountable to specific standards of training, certification and performance.

Mr. Tesh suggested that until the Committee can settle this issue, a policy statement would seem to be needed.

Mr. Bloch replied that there is a recently adopted requirement against agencies issuing policy or position statements that should be more appropriately handled in rule. He added that he could also work with the Division to put something out for the SPC industry as well as the canine detection teams, to clarify the current requirements concerning use of these canine detection “tools” in Structural Pest Control in North Carolina.

Mr. Tesh stated that any such statement should make it clear that these companies cannot operate independently unless they are licensed.

Mr. Burnette suggested that the Division could include something about this discussion in the News Release which Public Affairs issues following each Committee meeting.

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Mr. Dalley next presented information gained during the Division’s recent meeting with members of the Pest Management Association and the NC Wildlife Resources Staff concerning Wildlife removal companies –specifically, what operations are allowed under a depredation permit, as opposed to those operations that would require a structural pest control license.

Mr. Dalley stated that a wildlife depredation permit is required to remove any wildlife from structures. Depredation must first be proven. If a wild animal is inside a structure, that is considered prima facie evidence of depredation.

He pointed out that there is a breeding period for bats during which permits are not issued.

Mr. Dalley cited a 1994 Declaratory Ruling by the Committee on this subject, and asked for the Committee's guidance as to whether it felt that this should now be incorporated into its rules?

Mr. Bloch stated that this is now required by the Administrative Procedures Act, but even if it wasn't, it would be advisable to place such ruling into the administrative code, so it would be immediately accessible to the public.

Dr. Waldvogel asked the Committee if it wants to move forward with this as an addition to the rules, to which Mr. Tesh responded that perhaps the first step should be to republish this ruling and position statement to make sure that people know about it.

He MOVED, SECONDED by Mr. Clegg and CARRIED that the Division republish the 1994 Declaratory Ruling, and include this as well in the upcoming press release from this meeting.

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The next item was to consider the draft Questions and Answers Document concerning Mosquito Control in North Carolina under the NC Structural Pest Control Law and the NC Pesticide Law of 1971.

Mr. Dalley presented this item and stated that at its last meeting, the Committee directed Mr. Bloch and the Division to develop an advisory letter to licensees under the NC Pesticide Law to inform them of their obligation and limitations in performing mosquito control work under such license; and bring the letter back before the Committee for its consideration.

The Division and Mr. Bloch has crafted the draft as a Q&A document, which the Division would publish on its website, and at Dr. Waldvogel's suggestion, also include in the package for the next Pesticide Board meeting.

Responding to a question from Mr. Clegg as to the "Intent" referred to in Question #4, Mr. Bloch indicated that in order to prove a party's "Intent" one has to consider it in

relation to the surrounding circumstances—so he would ask to see the contract which is a clear statement of what their intention was. You would have to look at the stated intent of the customer and the outfit providing the services.

With respect to the response to Question #5, Carl Falco recommended that the wording be amended from “However, if the pesticide to be used is registered as a “ Restricted use Pesticide,” a pesticide license is required to purchase and to use it.” ’ to read, instead “However, if the pesticide to be used is a registered as a “ Restricted use Pesticide,” an appropriate pesticide license, or a structural pest control P Phase license is required to purchase and to use it.”

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The next agenda item was to consider proposed Settlement Agreements in the matters below—summaries of which were presented by Assistant Attorney General Barry Bloch:

#### **SPW12-10 RALPH D. NAYLOR**

- Ralph D. Naylor of JP Green Milling Co. in Mocksville agreed to pay \$1,000 for failing to maintain written records of commodity fumigation, failing to store Phostoxin, a restricted-use pesticide, in a locked storage area when not in use and for failing to post warning signs in the storage area at King Milling in King. Naylor is owner of King Milling and part-owner of JP Green Milling Co.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Tesh and CARRIED that the Settlement be approved.**

#### **SPW12-13 Dennis Benson**

- Dennis Benson the licensee of Alpine Exterminating Co. in Hiawassee, Ga., agreed to pay \$600 for failing to supervise employees who performed 57 W-phase structural pest jobs from Jan. 1, 2011, through April 30, 2012, without having a W-phase license. Mr. Benson has a P-phase license.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Hazelwood and CARRIED that the Settlement be approved.**

**SPW12-13 Michael A. Fernandez**

- Michael A. Fernandez of Alpine Exterminating Co. in Hiawassee, Ga., agreed to pay \$2,000 for performing 57 W-phase structural pest jobs from Jan. 1, 2011, through April 30, 2012, without a license to perform W-phase work.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Meacham and CARRIED that the Settlement be approved.**

**SPW 2-13 Gregory S. Lohman**

- Gregory S. Lohman of Alpine Exterminating Co. in Hiawassee, Ga., agreed to pay \$2,000 for performing 57 W-phase structural pest jobs from Jan. 1, 2011, through April 30, 2012, without a license to perform W-phase work.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Clegg and CARRIED that the Settlement be approved.**

**SPW12-17 Michael G. Rogers**

- Michael A. Rogers of Killingsworth Environmental of the Carolinas in Indian Trail, and managing member of Bed Bug Green Solution LLC, agreed to pay \$800 for technicians performing structural pest work without a structural pest control license. The technicians worked for Bed Bug Green Solution LLC and performed residential bed bug heat treatments. Bed Bug Green Solutions LLC did not have a structural pest control license from May 12, 2012, to Oct. 29, 2012 when they performed heat treatment for bed bugs.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Meacham and CARRIED that the Settlement be approved.**

**SPW12-1 Andrew G. Meyer**

- Andrew G. Meyer of Appalachian Termite and Pest Control Inc. in Banner Elk agreed to pay \$800 for performing 272 P-phase treatments, two W-phase treatments and 19 wood destroying insect inspections without a structural pest control license. Meyer's license expired on June 30, 2011, and was not renewed until Nov. 6, 2012.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Meacham and CARRIED that the Settlement be approved.**

#### **SPE12-13 Preston K. Turner**

- Preston K. Turner of Turner Pest Control in Washington agreed to pay \$2,000 for failure to obtain registered technician cards for nine employees.

**Following discussion it was MOVED by Mr. Clegg, SECONDED by Mr. Tesh and CARRIED that the Settlement be approved.**

#### **SPW12-16 Bo Gilliam**

- Bo Gilliam of Triad Pest Control Inc. in Winston-Salem agreed to pay \$800 for failure to provide structural pest control records for the treatment of a residential property for termites and for failure to supervise structural pest control work done under a licensee's management and failure to provide pest control records.

**Following discussion it was MOVED by Mr. Langley, SECONDED by Mr. Tesh and CARRIED that the Settlement be approved.**

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Inasmuch as there was no further business to come before the Committee, the Chairman again thanked the Association for its review and comments on the proposed amendments to the Law, and ADJOURNED the meeting.